

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION
NO. 05CV11039EFH

SOUTHEAST FLOATING DOCKS, INC.,

Plaintiff

v.

AGM MARINE CONTRACTORS, INC.,
CHILDS ENGINEERING CORPORATION,
AND THE TOWN OF PROVINCETOWN,

Defendants

AFFIDAVIT OF
RICHARD HOLLAND

I, Richard T. Holland, on oath, hereby depose and say as follows:

1. I am an attorney employed by Kopelman and Paige, P.C., which serves as Town Counsel to the Town of Provincetown, Massachusetts.
2. Attached hereto as Exhibit A is a true and accurate copy of an email dated June 8, 2005, that I received from Attorney Rosemary Hayes. In that email, Attorney Hayes rejected my offer to have the Town copy and deliver to her documents deemed responsive to the arbitration subpoena received by the Town.
3. Attached hereto as Exhibit B are true and accurate copies of a July 15, 2005, email exchange between me and Attorney Hayes. In that email exchange, Attorney Hayes promised to provide me with a CD Rom containing the images of the documents scanned by her during her June 2005 document inspection at the Town's Department of Public Works.
4. Attached hereto as Exhibit C is a true and accurate copy of an July 18, 2005 email that I sent to Attorney Hayes requesting the promised CD Rom.

5. Attached hereto as Exhibit D is a true and accurate copy of an August 5, 2005 email that I sent to Attorney Hayes transmitting photographs and making reference to Attorney Hayes' failure to produce the promised CD Rom.
6. Attached hereto as Exhibit E is a true and accurate copy of an August 5, 2005 letter that I sent to Attorney Hayes transmitting certain documents and requesting, again, that she provide me with the promised CD Rom. One of the documents enclosed with that letter was a copy of a December 8, 2003 email from the Town's insurance agent, BY&D Insurance Agency, indicating that the Town did not have coverage on the pier or the dock system, which plaintiff manufactured and was damaged in the December 2003 storm.
7. Attorney Hayes never responded to my requests for, and never provided me with a copy of, the promised CD Rom.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 17 DAY OF
OCTOBER 2006.

A handwritten signature in black ink, appearing to be 'RTH', written over a horizontal line.

Richard T. Holland

295920/24207/0008

EXHIBIT A

From: Rosemary Hayes [mailto:rhayes@const-law.com]
Sent: Wednesday, June 08, 2005 1:24 PM
To: Richard T. Holland
Cc: Kara Petruso
Subject: RE: Court Order

There is no need for anyone to copy documents until I look at them and mark them. Therefore, the cost is to put the records in a room and permit me to view them. If I want copies, I will pay for same when I am there. Concerning your "rates," I will bring the statute with me and we can follow it to the letter.

If you are withholding anything, I suggest we deal with it at the front end. How about if I forward a list of specific categories (within the scope of our requests) and you can respond? It will take me a couple of days to compile the list, so please let me know.

I am making arrangements to be in Provincetown on the dates you propose. I will let you know my ETA at the Town Hall as soon as I confirm the flight. Thank you.

This email message and any attachments are confidential and may be privileged. If you are not the intended recipient, please notify Hayes & Caraballo, P.L. immediately -- by replying to this message or by sending an email to postmaster@const-law.com -- and destroy all copies of this message and any attachments. Thank you. For more information about Hayes & Caraballo, P.L., please visit us at <http://www.const-law.com>.

EXHIBIT B

From: Rosemary Hayes [mailto:rhayes@const-law.com]
Sent: Wednesday, June 15, 2005 2:24 PM
To: Richard T. Holland
Cc: Kara Petruso
Subject: RE: AGM/Southeast/Provincetown

Got it. Will do. I'm very respectful of the Town's documents and will leave exactly as they were. Thank you.

This email message and any attachments are confidential and may be privileged. If you are not the intended recipient, please notify Hayes & Caraballo, P.L. immediately -- by replying to this message or by sending an email to postmaster@const-law.com -- and destroy all copies of this message and any attachments. Thank you. For more information about Hayes & Caraballo, P.L., please visit us at <http://www.const-law.com>.

From: Richard T. Holland [mailto:RHolland@k-plaw.com]
Sent: Wednesday, June 15, 2005 1:43 PM
To: Rosemary Hayes
Subject: RE: AGM/Southeast/Provincetown

The scanner sounds like it will work. I will need a disc of whatever you create, and you MUST be respectful, please, of the documents and the order in which they are presented. How big is the scanner? I imagine its desktop sized? So, I will see you on June 27, you will bring your handy dandy scanner, and you will create a disc for me of whatever you create/scan.

Rick.

Richard T. Holland
Kopelman and Paige, P.C.
31 St. James Avenue
Boston, MA 02116
(617) 556-0007
(617) 654-1735 (fax)
rholland@k-plaw.com

This message and the documents attached to it, if any, are intended only for the use of the addressee and may contain information that is PRIVILEGED and CONFIDENTIAL and may contain ATTORNEY WORK PRODUCT. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please delete all electronic copies of this message and attachments thereto, if any, and destroy any hard copies you may have created and notify me immediately.

-----Original Message-----

From: Rosemary Hayes [mailto:rhayes@const-law.com]
Sent: Wednesday, June 15, 2005 1:45 PM
To: Richard T. Holland
Subject: RE: AGM/Southeast/Provincetown

Yesterday. What is your problem with bringing a copier and making our own copies?

How about I bring a scanner and scan them and then I will have them on disk. You can have a copy, if you want to keep track of what I scanned.

EXHIBIT C

From: Richard T. Holland
Sent: Monday, July 18, 2005 3:22 PM
To: 'rhayes@const-law.com'
Subject: RE: Activity in Case 1:05-cv-11039-EFH Southeast Floating Docks, Inc. v. AGM Marine Contractors, Inc. et al "Order on Motion for Contempt"

I almost forgot. While I am looking in to your email of June 30, could you please forward to me a copy of the CD Rom that you promised (containing copies of the documents you scanned during your June 27/28 inspection). Thank you.

Rick.

Richard T. Holland
Kopelman and Paige, P.C.
31 St. James Avenue
Boston, MA 02116
(617) 556-0007
(617) 654-1735 (fax)
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EXHIBIT D

From: Richard T. Holland
Sent: Friday, August 05, 2005 10:12 AM
To: 'rhayes@const-law.com'; 'tcaraballo@const-law.com'
Cc: 'Schaub, Jr., Charles E.'
Subject: FW: Pictures

Attached are pictures of December 2003 storm. You may already have these, but because you have apparently reneged on your agreement to provide me with a CD Rom of the documents scanned during your June inspection of documents, which, regrettably, doesn't surprise me, I cannot know whether you scanned these photographs during your inspection.

I trust you are in receipt of my most recent correspondence. If you have any questions, please feel free to call me. Have a great weekend.

Rick.

Richard T. Holland
Kopelman and Paige, P.C.
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EXHIBIT E

LEONARD KOPELMAN
DONALD G. PAIGE
ELIZABETH A. LANE
JOYCE FRANK
JOHN W. GIORGIO
BARBARA J. SAINT ANDRE
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DAVID J. DONESKI
JUDITH C. CUTLER
KATHLEEN E. CONNOLLY
DAVID C. JENKINS
MARK R. REICH
BRIAN W. RILEY
DARREN R. KLEIN
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JASON R. TALERMAN
GEORGE X. PUCCI

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RICHARD T. HOLLAND
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JEFFREY T. BLAKE
R. ERIC SLAGLE
CAROLYN KELLY MACWILLIAM
ANNE C. ROSENBERG
PETER L. MELLO

August 2, 2005

Rosemary H. Hayes, Esq.
Hayes & Caraballo, PL
830 Lucerne Terrace
Orlando, FL 32801

Re: Southeast Floating Docks, Inc. v. AGM Marine Contractors, Inc. et al.
U.S. District Court, C.A. No. 05-10039-EFH

Dear Ms. Hayes:

As we discussed via email on or about July 18, I offer the following in response to your email of June 30, 2005, in connection with the above-referenced matter. In that email, you state that "there are hundreds of missing, material documents." This bald allegation has no merit and is deserving of no response other than the following: The Town has complied with the Court's June 2 order by providing you access to the Town's files for the MacMillan Pier project.

In your email you reiterate the requests for documents contained in the exhibit appended to the arbitration subpoena served on the Town in February 2005. Since the Town has provided you with access to the Town's project files, I do not intend to respond in detail to each such request. However, certain items should be noted for the record. First, as to your suggestion that you have not been provided with copies of all written demands made by or on behalf of the Town pursuant to G.L. c.93A in connection with the failure of the floating dock system, such demands were identified and provided to you with my letter dated July 8, 2004.

Second, regarding your suggestion that the Town did not provide a copy of the video recording of the December, 2003 storm, please be reminded that I provided a copy of this video to you with my letter of June 3, 2004. If you require additional copies of any materials already provided, I will be happy to do so at your expense.

KOPELMAN AND PAIGE, P.C.

Rosemary H. Hayes, Esq.

August 2, 2005

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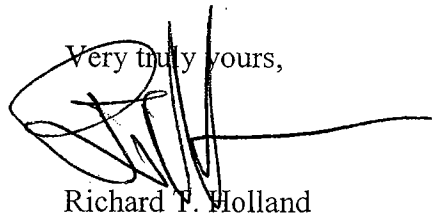
Third, as for the settlement agreement between AGM Marine Contractors and the Town, it is my understanding that you have a copy of this agreement. If this is not true, please call me and I shall provide you with a copy.

Fourth, as for computer-stored data and electronic mail dated on or after December 1, 2003, I enclose hard copies of e-mails and documents which were compiled electronically and forwarded to me for printing and production to you. Hard copies of the enclosed documents, if such had been printed and filed by the Town, would have been included in the files inspected by you on June 27 and 28.

Finally, I have yet to receive a copy of the CD Rom containing the documents scanned by you during the June 27 and 28 inspection, which you had promised to provide in exchange for the Town permitting you to scan documents during your inspection. Please provide me with such CD Rom.

Should you have any questions, please call me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Richard F. Holland", with a long horizontal line extending to the right.

Richard F. Holland

RTH/sjm

Enc.

cc: Town Manager
Public Works Director
Charles Schaub, Esq.

257090/PROV/0008